

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

*In Re: Zillow Group, Inc. Session Replay Software Litigation*

Master File No. 2:22-cv-01282-RAJ

## This Document Refers to: All Actions

## **MOTION TO APPOINT INTERIM CLASS COUNSEL**

**NOTE ON MOTION CALENDAR:  
February 24, 2023**

## INTRODUCTION

Federal Rule of Civil Procedure 23(g) provides “the court may designate interim counsel to act on behalf of a putative class before determining whether to certify the action as a class action.” *In re Ring LLC Priv. Litig.*, No. CV1910899MWFRAOX, 2020 WL 9763065, at \*1 (C.D. Cal. Nov. 13, 2020) (quoting Fed. R. Civ. P. 23(g)(3)); *see also Benkle v. Ford Motor Co.*, No. SACV161569DOCJCGX, 2017 WL 8220707, at \*3 (C.D. Cal. Apr. 28, 2017) (same). “Designation of lead counsel now ensures the protection of the interests of the class in making and responding to motions, conducting discovery, and negotiating possible settlements.” *Szymczak v. Nissan N. Am., Inc.*, Nos. 10 CV 7493(VB), 12 CV 1495(VB), 12 CV 2149(VB), 2012 WL 1877306, at \*1 (S.D.N.Y. May 15, 2012) (citing MANUAL FOR COMPLEX LITIGATION (Fourth § 21.11)).

Pursuant to Federal Rule of Civil Procedure 23(g)(3), Plaintiffs Natalie Perkins, Kenneth Hasson, Ashley Popa, Mark Conlisk, Michael Dekhtyar, Jill Strelzin, Jill Adams, and Ryan Margulis (“Plaintiffs”) respectfully move for an order appointing Gary F. Lynch of Lynch Carpenter, LLP (“Lynch Carpenter”) and Joseph P. Guglielmo of Scott+Scott Attorneys at Law

1 LLP (“Scott+Scott”) as Interim Class Counsel to lead this litigation on behalf of the Class.  
 2 Plaintiffs further move for appointment of Kim D. Stephens of Tousley Brain Stephens, PLLC,  
 3 (“Tousley”) as Interim Liaison Counsel. Proposed Interim Class Counsel have significant  
 4 nationwide consumer class action experience, knowledge of the applicable law, and substantial  
 5 resources that can be used to litigate this matter. They also have a proven track record of success  
 6 in similar privacy cases that will be of great benefit to the proposed Class. Appointment of Interim  
 7 Class Counsel now will promote efficiency, conserve judicial resources, and create a unified voice  
 8 for putative class members that will streamline this litigation, with a team capable of taking the  
 9 case to trial, if necessary.

10 **BACKGROUND**

11 The above captioned matters are similar class action lawsuits<sup>1</sup> arising out of Zillow’s  
 12 procurement and use of JavaScript computer code (“Session Replay Code”) to monitor, collect,  
 13 and record mouse movements, keystrokes, mouse clicks, and other electronic communications  
 14 (“Website Communications”) of visitors to its website, [www.zillow.com](http://www.zillow.com). Each of the above  
 15 captioned matters are brought on behalf of overlapping nationwide and state-specific classes of  
 16 individuals who had their Website Communications with Zillow’s website monitored, collected,  
 17 and recorded without their consent by Session Replay Code embedded in Zillow’s website.  
 18 Further, all the above captioned class actions allege that Zillow’s use and procurement of Session  
 19 Replay Code from companies such as Microsoft (“Session Replay Providers”) is violative of state  
 20 two-party consent wiretapping laws and invades the privacy of Plaintiffs’ and members of the  
 21 proposed classes.

22 Proposed Interim Class Counsel now seek appointment as interim class counsel pursuant  
 23 to Fed. R. Civ. P. 23(g)(3).

24 **LEGAL STANDARD**

25 Rule 23(g)(3) provides that the Court “may designate interim counsel to act on behalf of a

26  
 27 <sup>1</sup> The parties previously filed a Stipulation Ordering Consolidation pursuant to Fed. R. Civ.  
 28 P. 42(a) and Local Rule 42 seeking to consolidate the above captioned actions. This Stipulation  
 was granted on January 18, 2023. ECF No. 33.

1 putative class before determining whether to certify the action as a class action.” Fed. R. Civ. P.  
 2 23(g)(3). “[D]esignation of interim counsel clarifies responsibility for protecting the interests of  
 3 the class during precertification activities[.]” MANUAL FOR COMPLEX LITIGATION (Fourth) § 21.1;  
 4 *Azpeitia v. Tesoro Refining & Mktg. Co. LLC, et al.*, No. 17-cv-00123-JST, 2017 WL 4071368, at  
 5 \*2 (N.D. Cal. Sept. 14, 2017) (same); *Wang v. OCZ Technology Grp., Inc.*, Case No. C 11-01415  
 6 PSG, 2011 WL 13156817, at \*2 (N.D. Cal. June 29, 2011) (same). Indeed, the Advisory  
 7 Committee Notes to Rule 23 recognize “that in many cases the need to progress toward the  
 8 certification determination may *require* designation of interim counsel.” Fed. R. Civ. P. 23,  
 9 advisory committee note to 2003 amendment (emphasis added).

10 “The appointment of interim counsel is discretionary and is particularly suited to complex  
 11 actions.” *McFadden v. Microsoft Corp.*, No. C20-0640-RSM-MAT, 2020 WL 5642822, at \*1  
 12 (W.D. Wash. Sept. 22, 2020). Factors relevant to the appointment of counsel include: “(i) the work  
 13 counsel has done in identifying or investigating potential claims in the action; (ii) counsel’s  
 14 experience in handling class actions, other complex litigation, and the types of claims asserted in  
 15 the action; (iii) counsel’s knowledge of the applicable law; and (iv) the resources that counsel will  
 16 commit to representing the class.” *Id.* (quoting Fed. R. Civ. P. 23(g)(1)(A)). The Court may also  
 17 “consider any other matter pertinent to counsel’s ability to fairly and adequately represent the  
 18 interests of the class.” *Id.* (quoting Fed. R. Civ. P. 23(g)(1)(B)).

19 **ARGUMENT**

20 **I. Proposed Interim Class Counsel Have Thoroughly Identified and Investigated the  
 21 Claims.**

22 While no one factor under Federal Rule of Civil Procedure 23(g)(1) “should necessarily be  
 23 determinative,” Advisory Committee Notes (2003), the investigative and analytical efforts of  
 24 counsel can be a deciding factor:

25 In a case with a plaintiff class, the process of drafting the complaint requires some  
 26 investigatory and analytical effort, tasks that strangers to the action most likely will  
 27 not have undertaken. All other things being equal, when an attorney has performed  
 28 these or other investigative and analytical tasks before making the application for  
 appointment, he or she is in a better position to represent the class fairly and

1 adequately than attorneys who did not undertake those tasks.

2 MOORE'S FEDERAL PRACTICE (Third) § 23.120(3)(a).

3 Here, Proposed Interim Class Counsel's thorough work in identifying and investigating the  
 4 claims in this case demonstrates that they have and will continue to fairly and adequately represent  
 5 the proposed Class. For example, Proposed Interim Class Counsel have devoted substantial  
 6 resources towards developing the claims that have been filed against Defendants. Proposed Interim  
 7 Co-Lead Counsel have performed (and continue to perform) the following work on behalf of  
 8 Plaintiffs and Class Members:

- 9 a. Investigated potential legal claims arising from Zillow's use and procurement of  
 10 Session Replay Code from Session Replay Providers;
- 11 b. Analyzed reports and articles discussing Session Replay Code, data privacy, and  
 12 describing Defendants' challenged conduct;
- 13 c. Reviewed Zillow's website, including the Session Replay Code running on  
 14 Zillow's website, the information collected by the Session Replay Code, Zillow's  
 15 Terms of Use, and Zillow's Privacy Policy;
- 16 d. Investigated the nature of the challenged conduct at issue here by interviewing  
 17 potential clients;
- 18 e. Investigated the adequacy of the named Plaintiffs to represent the putative Class;
- 19 f. Aligned with local counsel in Washington to assist in the prosecution of this matter;
- 20 g. Drafted and filed separate complaints against Zillow and Microsoft;
- 21 h. Communicated internally amongst Plaintiffs' counsel regarding the most efficient  
 22 manner to organize this litigation; and
- 23 i. Worked cooperatively, coordinated, and continue to meet and confer with  
 24 Defendants' counsel regarding this litigation.

25 As evidenced from the firm resumes attached to the Declarations of Gary F. Lynch and  
 26 Joseph P. Guglielmo, Proposed Interim Class Counsel have the resources and experience  
 27 necessary to successfully litigate this action. They and their firms are well-funded and well-staffed  
 28 and have represented plaintiffs in some of the largest class actions in the country. They are willing

1 and able to commit to this litigation process regardless of its length or complexity. As explained  
 2 in more detail below, Proposed Interim Class Counsel have a proven track record of devoting time  
 3 and financial resources to the full prosecution of similar types of actions, and they are prepared to  
 4 do so in this case as well.

5 Because Proposed Interim Class Counsel performed important work that has already inured  
 6 to the benefit of the proposed class, and because Proposed Interim Class Counsel are prepared to  
 7 commit substantial resources to this case, the first factor of the Rule 23(g) analysis weighs heavily  
 8 in favor of their appointment.

9 **II. Proposed Interim Class Counsel are Experienced in Litigating Complex Cases,  
 10 Including Data Privacy Litigation, and Have an Extensive Knowledge of the  
 Applicable Law.**

11 Proposed Interim Class Counsel have extensive experience litigating complex class actions  
 12 and have demonstrated particular success in litigating data privacy actions. Proposed Interim Class  
 13 Counsel has been at the forefront of the emerging law applicable to data privacy claims and has  
 14 established a track record of working efficiently and collaboratively to obtain significant  
 15 recoveries on behalf of the classes they have represented. The second and third factors of the Rule  
 16 23(g) analysis thus further weigh in favor of their appointment.

17 **A. Proposed Interim Class Counsel.**

18 **1. Lynch Carpenter**

19 Lynch Carpenter is a 20-lawyer plaintiff-side class action firm with offices in  
 20 Pennsylvania, Illinois, and California. Lynch Carpenter has been at the forefront in data breach  
 21 and privacy litigation, obtaining leadership appointments in many of the largest and most well-  
 22 known cases, generating seminal legal authority in both trial and appellate courts. For example,  
 23 Lynch Carpenter pioneered the applicability of Pennsylvania's Wiretapping and Electronic  
 24 Surveillance Control Act ("WESCA"), 18 PA. CONS. STAT. 5702 *et seq.* to the interception of  
 25 Website Communications in *Popa v. Harriet Carter Gifts, Inc.*, 52 F.4th 121 (3d Cir. 2022) (*en  
 26 banc*). The Third Circuit reached a well-reasoned and unanimous decision—reversing the district  
 27 court's grant of summary judgment in favor of the defendants—acknowledging that a website  
 28 owner and a data collection company could not avoid liability under WESCA for intercepting an

1 online shopper's data. *Id.* at 129. Instead of merely showing that the shopper communicated with  
 2 the data collection's servers when she used the website to shop, the companies had to demonstrate  
 3 that the shopper gave prior consent to the interception. *Id.* The Third Circuit also found that  
 4 Website Communications are "intercepted" under WESCA at the point where software re-routes  
 5 Website Communications from a user's device, not where the Website Communications are  
 6 ultimately received. *Id.* at 131.

7 Likewise, Lynch Carpenter (then known as Carlson Lynch) forged the development of  
 8 Pennsylvania's data breach law with the seminal Supreme Court of Pennsylvania decision in  
 9 *Dittman v. UPMC*, 196 A.3d 1036 (Pa. 2018). The court issued a landmark opinion—reversing  
 10 the two lower courts—acknowledging that general principles of negligence support holding those  
 11 who collect and store personally identifying information to a common law duty to reasonably  
 12 safeguard such information from cyber-attack. *See Dittman*, 196 A.3d at 1047. The court also  
 13 clarified that Pennsylvania's economic loss doctrine does not apply where a tort duty exists  
 14 independent of any contract.

15 Lynch Carpenter's willingness to go the distance for its clients also enables the firm to  
 16 negotiate from a position of strength and obtain favorable settlements for victims of privacy  
 17 invasions. For example, Lynch Carpenter attorneys have served as co-lead counsel or in other  
 18 leadership positions in: *In re TikTok, Inc., Consumer Privacy Litig.*, MDL 2948 (N.D. Ill.) (Lynch  
 19 Carpenter serves as co-lead counsel; the district court recently granted final approval to a class  
 20 settlement providing \$92 million in monetary relief for the class); *In re Target Corp. Customer*  
 21 *Data Sec. Breach Litig.*, MDL 2522 (D. Minn.) (Lynch Carpenter was appointed to the Executive  
 22 Committee managing the litigation on behalf of all plaintiffs (consumers, financial institution, and  
 23 shareholders). The case was ultimately settled for \$10 million (for consumers) and \$39 million  
 24 (for financial institutions)); *Dittman v. UPMC* (multimillion dollar settlement reached and  
 25 approved after remand from the Pennsylvania Supreme Court); *In re Vizio, Inc. Consumer Privacy*  
 26 *Litig.*, MDL 2693 (C.D. Cal.) (consumer privacy breach, steering committee; \$17 million  
 27 settlement); and *In re: Ashley Madison Customer Data Sec. Breach Litig.*, 4:15-md-02669 (E.D.  
 28

1 Mo.) (consumer data breach, executive committee; \$11.2 million settlement).

2       Further, as of January 2022, Lynch Carpenter attorneys are currently involved in leadership  
 3 positions in some of the largest active data breach and privacy MDLs and consolidated cases across  
 4 the country, including: *In re Wawa, Inc. Data Security Litig.*, 2:19-cv-6019 (E.D. Pa.)  
 5 (representing payment card issuers as co-lead counsel); *In re: Marriott International, Inc.*, 8:19-  
 6 md-2879-PWG (D. Md.) (consumer data breach, steering committee); and *In re Blackbaud, Inc.*  
 7 *Customer Data Breach Litig.*, MDL 2972 (D.S.C.) (consumer data breach, steering committee).  
 8 Lynch Carpenter is also litigating cases factually similar to this one where an undisclosed third  
 9 party collected data from websites without the website visitor's consent: *Popa v. Harriet Carter*  
 10 *Gifts, Inc.*, Case No. 2:19-cv-00450-WSS (W.D. Pa.) and *Harlon v. W. Atlee Burpee*, GD-18-  
 11 012917 (Pa. Ct. Com. Pl. Allegheny Cty.); *Cousin v. Sharp Healthcare*, No. 37-2022-00047290-  
 12 CU-MC-CTL (Cal. Sup. Ct. San Diego Cty.).

13           **a.       Gary F. Lynch**

14       Gary F. Lynch is the founding partner of Lynch Carpenter, and he has been engaged in the  
 15 practice of law for over thirty years, with the majority of his career focusing on the litigation of  
 16 complex class actions on behalf of plaintiffs. Mr. Lynch's extensive experience in data breach and  
 17 privacy litigation, his current and prior leadership roles in consolidated and multi-district litigation  
 18 cases, and his proven ability to work collaboratively with co-lead counsel in significant class  
 19 actions, make him uniquely qualified to co-lead this case. Mr. Lynch has been appointed to lead  
 20 many of the largest and most complex data breach cases over the past decade, including *In re*  
 21 *Wawa*; *In re Equifax, Inc.*, MDL 2800 (N.D. Ga.); *In re The Home Depot, Inc.*, MDL 2583 (N.D.  
 22 Ga.); and *First Choice Fed. Credit Union v. The Wendy's Co.*, 2:16-cv-00506 (W.D. Pa.). He has  
 23 served in committee positions in: *In re Marriott Int'l*; *In re: Cmtys. Health Sys., Inc., Customer Sec.*  
 24 *Data Breach Litig.*, MDL 2595, 15-cv-0222 (N.D. Ala.); *In re: Arby's Rest. Group, Inc. Data Sec.*  
 25 *Litig.*, 17-mi-55555 (N.D. Ga.); *In re: Target Corp.*; and *Greater Chautauqua Fed. Credit Union*  
 26 *et al v. Kmart Corp.*, 15-cv-02228 (N.D. Ill.), to name just a few examples.

27       Mr. Lynch's efforts have also directly developed the law in favor of data breach and privacy  
 28 invasion victims. In addition to succeeding on dispositive motions in most of the aforementioned

1 cases, he argued both the *Popa v. Harriet Carter Gifts, Inc.* and *Dittman v. UPMC* appeals on  
 2 behalf of the plaintiffs.

3 As demonstrated above and in his personal and firm resume, Mr. Lynch is well-versed in  
 4 the factual and legal nuances of data privacy cases and has a demonstrated ability to successfully  
 5 lead such cases. He has been a direct participant in almost every phase of data privacy litigation,  
 6 including initial investigation, dispositive motions, discovery, settlement negotiation, expert  
 7 witness evaluation and retention, and appeals. Given this breadth of data privacy experience, Gary  
 8 Lynch and his firm are well-qualified to serve as Interim Co-Lead Class Counsel in this action.

9 **2. Scott+Scott**

10 Scott+Scott is an internationally recognized class action law firm headquartered in  
 11 Connecticut with offices in New York, Arizona, California, Ohio, Texas, Virginia, Amsterdam,  
 12 Berlin, and London. The firm was founded in 1975 and now has over one hundred attorneys  
 13 dedicated to complex and class action litigation, representing individuals, businesses, and public  
 14 and private pension funds that have suffered from corporate fraud and wrongdoing. The firm  
 15 specializes in complex litigation, including an emphasis on antitrust, consumer, and securities class  
 16 actions.

17 Scott+Scott, was recently recognized by Law360 as a “Ceiling Smasher” for its  
 18 representation of women in their equity partnership. Female attorneys make up more than a third  
 19 of Scott+Scott’s equity partnership and Scott+Scott’s Executive Committee, and the firm believes  
 20 that its commitment to diversity is one of the reasons it was recognized by U.S. News & World  
 21 Report for 2021 as a “Best Law Firm.”

22 Scott+Scott’s Consumer Practice Group consists of some of the premier advocates in the  
 23 area of consumer protection. Scott+Scott’s Consumer Practice Group has been at the forefront in  
 24 litigating and securing some of the most significant consumer protection settlements on behalf of  
 25 its clients, resulting in hundreds of millions of dollars to class members. Scott+Scott has achieved  
 26 significant recoveries for their clients, including: *In re: Foreign Exch. Benchmark Rates Antitrust*  
 27 *Litig.*, No. 13-cv-07789 (S.D.N.Y.) (challenging price-fixing of foreign exchange rates; over \$2.3  
 28 billion in final-approved settlements); *In re Disposable Contact Lens Antitrust Litig.*, No. 15-md-

1 02626 (M.D. Fla.) (class action alleging illegal anticompetitive policies to eliminate discount  
 2 pricing by the major manufacturers and distributors of disposable contact lenses; over \$115  
 3 million); *Dahl v. Bain Capital Partners, LLC*, No. 07-cv-12388 (D. Mass.) (challenging bid  
 4 rigging and market allocation of leveraged buyouts by private equity firms; \$590.5 million in  
 5 settlements); *Alaska Elec. Pension Fund v. Bank of Am. Corp.*, No. 14-cv-07126 (S.D.N.Y.)  
 6 (challenging price-fixing of the ISDAfix benchmark interest rate; \$504.5 million in settlements);  
 7 *In re GSE Bonds Antitrust Litig.*, No. 19-cv-01704 (S.D.N.Y.) (challenging manipulation in the  
 8 market for bonds issued by Government-Sponsored Entities, e.g., Freddie Mac and Fannie Mae;  
 9 \$386 million settlement.)

10 Scott+Scott is currently prosecuting a number of privacy related actions, including in *In re*  
 11 *Google Assistant Privacy Litig.*, 5:19-cv-04286 (N.D. Cal.), representing consumers alleging  
 12 California state law claims challenging Google Assistant's disclosure of their private, confidential  
 13 communications without consent, and *Lopez v. Apple Inc.*, 4:19-cv-04577 (N.D. Cal.), representing  
 14 consumers and their minor children alleging privacy violations under California state law by Apple  
 15 through its Siri application.

16 Scott+Scott also has diverse and extensive experience in class action consumer protection  
 17 cases, including:

- 18 • ***In re Prudential Ins. Co. of Am. SGLI/VGLI Contract Litig.***, 3:11-md-02208 (D.  
 19 Mass.) (\$40 million settlement achieved on behalf of a class of military service  
 members and their families who purchased insurance contracts);
- 20 • ***The Vulcan Soc'y, Inc. v. The City of N.Y.***, 07-cv-02067 (E.D.N.Y.) (\$100 million  
 21 settlement and significant injunctive relief was obtained for a class of black  
 applicants who sought to be New York City firefighters but were denied or delayed  
 22 employment due to racial discrimination);
- 23 • ***In re Providian Fin. Corp. Credit Card Terms Litig.***, 2:10-md-01301 (E.D. Pa.)  
 24 (\$105 million settlement achieved on behalf of a class of credit card holders who  
 were charged excessive interest and late charges on their credit cards); and
- 25 • ***Gunther v. Capital One, N.A.***, 2:09-cv-02966 (E.D.N.Y.) (obtained net settlement  
 26 resulting in class members receiving 100% of their damages).

27           a.     **Joseph P. Guglielmo**

28           Mr. Guglielmo seeks appointment as one of the most experienced litigators in the nation,

1 on behalf of plaintiffs in data breach class actions. Just this past December, as part of the fairness  
 2 hearing to approve a \$5.1 million settlement in a data breach action brought on behalf of a class of  
 3 sophisticated financial institutions, *Ark. Fed. Credit Union v. Hudson's Bay Co.*, Judge Castel, of  
 4 the Southern District of New York, remarked upon Mr. Guglielmo's "extensive experience in  
 5 litigating data breach class actions in federal courts." ECF No. 110, No. 19-cv-04492 (S.D.N.Y.).  
 6 Mr. Guglielmo's recent experience steering data breach actions includes appointments in landmark  
 7 actions, such as *In re Equifax, Inc. Customer Data Sec. Breach Litig.*, No. 17-md-02800 (N.D.  
 8 Ga.), where Mr. Guglielmo was appointed as co-lead counsel for the financial institution plaintiffs  
 9 and negotiated a settlement valued at approximately \$32.5 million. ECF No. 1193. In approving  
 10 the landmark settlement, Judge Thrash, of the Northern District of Georgia, remarked that the  
 11 settlement obtained by Mr. Guglielmo was "an excellent one" and noted the "professionalism and  
 12 excellence in [his] representation" of plaintiffs and the Class. ECF. No. 1185. In *In re The Home*  
 13 *Depot, Inc., Customer Data Sec. Breach Litig.*, No. 14-md-02583 (N.D. Ga.), Mr. Guglielmo  
 14 served as co-lead counsel on behalf of financial institution plaintiffs and was one of the lead  
 15 attorneys who negotiated a \$27.25 million settlement on behalf of financial institutions nationwide.  
 16 In *First Choice Fed. Credit Union v. The Wendy's Co.*, No. 16-cv-00506 (W.D. Pa.), Mr.  
 17 Guglielmo was one of the principal negotiators of a \$50 million settlement on behalf of plaintiffs  
 18 involving the breach of personal and financial information of millions of credit and debit cards.  
 19 Mr. Guglielmo, previously, was appointed to the plaintiffs' steering committee on behalf of  
 20 financial institution plaintiffs, in *In re Target Corp. Customer Data Sec. Breach Litig.*, No. 14-  
 21 md-02522 (D. Minn.), where he helped achieve certification of a nationwide class and a settlement  
 22 of approximately \$59 million. In *Veridian Credit Union v. Eddie Bauer LLC*, 2:17-cv-00356 (W.D.  
 23 Wash.), Mr. Guglielmo was one co-lead counsel on behalf of plaintiffs involving the breach of  
 24 credit and debit card information and obtained a \$9.8 million settlement.

25 As lead counsel for financial institution plaintiffs in *Winsouth Credit Union v. Mapco*  
 26 *Express Inc.*, No. 14-cv-01573 (M.D. Tenn.), Mr. Guglielmo negotiated the largest dollar-per-  
 27 payment-card recovery in a data breach action brought on behalf of a class of financial institutions.  
 28 Mr. Guglielmo was also lead counsel in *Phillips v. Mapco Express Inc.*, No. 14-cv-01710 (M.D.

1 Tenn.), which resulted in settlement of \$500.00 for each class member.

2 Mr. Guglielmo, along with other attorneys at Scott+Scott, was recognized for his efforts  
 3 representing New York University in obtaining a monumental temporary restraining order of  
 4 over \$200 million from a Bernard Madoff feeder fund. Ex. 3 at 5. Specifically, New York State  
 5 Supreme Court Justice Richard B. Lowe III stated, “Scott+Scott has demonstrated a remarkable  
 6 grasp and handling of the extraordinarily complex matters in this case.” *NYU v. Ariel Fund Ltd.*,  
 7 No. 603803/08, Order at 9–10 (N.Y. Supr. Ct. Feb. 22, 2010). The extremely professional and  
 8 thorough means by which NYU’s counsel has litigated this matter has not been overlooked by  
 9 this Court.”

10 Mr. Guglielmo has demonstrated his ability to lead complex class actions involving data  
 11 privacy and data security. He has been instrumental in developing the claims in this action and  
 12 will serve as the lead attorney for his firm. Mr. Guglielmo’s experience and results make him  
 13 well-qualified to serve as Interim Co-Lead Class Counsel.

14 **B. Proposed Interim Liaison Counsel.**

15 Mr. Stephens and Tousley Brain Stephens (“TBS”) have a Seattle and national reputation of  
 16 achieving exceptional results. Mr. Stephens devotes a substantial portion of his practice to consumer  
 17 class litigation, and TBS has recovered well over a billion dollars for class members related to  
 18 consumer fraud, product liability, antitrust conspiracies, securities violations, and data breaches.  
 19 The firms’ experience includes: *Glenn v. Hyundai Motor America*, No. 8:15-cv-02052 (C.D. Cal.)  
 20 (co-lead); *In re Premera Blue Cross Customer Data Breach Security Litig.*, No.15-md-2633 (D. Or.)  
 21 (lead); *Zwicker v. General Motors*, No. 07-cv-00291 (W.D. Wash) (co-lead); *Cole v. Wells Fargo*  
 22 *Bank*, No. 07-cv-916-RSL (W.D. Wash.) (co-lead); *Grays Harbor Adventist Christian School v.*  
 23 *Carrier Corp.*, No. 05-05437 (W.D. Wash.) (co-lead).

24 In its work representing classes, Tousley Brain Stephens has consistently been commended  
 25 for its advocacy and the results it achieves. The Honorable Benjamin H. Settle, for example,  
 26 applauded Tousley Brain’s work as sole class counsel settling *Ikuseghan v. Multicare Health*  
 27 *System*, No. C14-5539, 2016 WL 4363198, at \*2 (W.D. Wash. Aug. 16, 2016): “As the Court noted  
 28 during the final settlement hearing, class counsel obtained an extraordinarily good result for the

1 class following an arm's-length negotiation." Similarly, the Honorable Robert S. Lasnik noted in  
 2 *Cole v. Wells Fargo Bank, N.A.*, No. C07-0916-RSL, Doc. 33 & 34 (W.D. Wash.)—a case in which  
 3 the class obtained "complete relief"—that "Class Counsel achieved an excellent result for the Class  
 4 in a short amount of time."

5 **III. Proposed Interim Class Counsel Will Commit All Necessary Resources to the Class  
 6 and Will Draw Upon and Coordinate the Work of Other Plaintiffs' Counsel,  
 7 Consistent with the Needs of the Litigation**

8 The final Fed. R. Civ. P. 23(g) factor, which concerns the resources Counsel will commit  
 9 to the case, also strongly supports the appointment of Proposed Interim Class Counsel. Here, in  
 10 addition to their own work, Proposed Interim Class Counsel can, as needed, draw upon the skills  
 11 and talents of other Plaintiffs' counsel who have filed complaints in this consolidated action.  
 Proposed Interim Class Counsel will manage such work to ensure efficiencies.

12 Proposed Interim Class Counsel have already demonstrated their commitment to this  
 13 litigation by devoting substantial resources and coordinating among themselves to file this  
 14 leadership proposal. As their firm resumes and counsels' experience indicate, Proposed Interim  
 15 Class Counsel have the resources to see this litigation through to its conclusion, including trial.

16 The firms' resources are not merely financial, but also include substantial expertise and  
 17 work-product developed in other similar cases, which will benefit Plaintiffs and the putative Class.  
 18 Proposed Interim Class Counsel's ability to draw from this well-developed repository of  
 19 information will also allow them to streamline the litigation. As interim class counsel, Proposed  
 20 Interim Class Counsel will continue to commit the same resources and effort to this case as they  
 21 have committed to their other, successful class action litigations, and are committed to working  
 22 cooperatively and efficiently for the benefit of the class.

23 **CONCLUSION**

24 For the foregoing reasons, Plaintiffs respectfully request that the Court appoint Gary F.  
 25 Lynch of Lynch Carpenter and Joseph P. Guglielmo of Scott+Scott as Interim Class Counsel, and  
 26 Kim D. Stephens of Tousley as Interim Liaison Counsel.

27 I certify that this memorandum contains 4,053 words in compliance with the Local Civil  
 28 Rules.

1 Dated: February 8, 2023

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